

103D CONGRESS
2D SESSION

S. 2375

AN ACT

To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

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To amend title 18, United States Code, to make clear a telecommunications carrier's duty to cooperate in the interception of communications for law enforcement purposes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. INTERCEPTION OF DIGITAL AND OTHER COM-**
 2 **MUNICATIONS.**

3 (a) IN GENERAL.—Part I of title 18, United States
 4 Code, is amended by inserting after chapter 119 the fol-
 5 lowing new chapter:

6 **“CHAPTER 120—TELECOMMUNICATIONS**
 7 **CARRIER ASSISTANCE TO THE GOV-**
 8 **ERNMENT**

“Sec.

“2601. Definitions.

“2602. Assistance capability requirements.

“2603. Notices of capacity requirements.

“2604. Systems security and integrity.

“2605. Cooperation of equipment manufacturers and providers of telecommuni-
 cations support services.

“2606. Technical requirements and standards; extension of compliance date.

“2607. Enforcement orders.

“2608. Payment of costs of telecommunications carriers.

9 **“§ 2601. Definitions**

10 “(a) DEFINITIONS.—In this chapter—

11 “the terms defined in section 2510 have, re-
 12 spectively, the meanings stated in that section.

13 “‘call-identifying information’—

14 “(A) means all dialing or signalling infor-
 15 mation that identifies the origin, direction, des-
 16 tination, or termination of each communication
 17 generated or received by the subscriber equip-
 18 ment, facility, or service of a telecommuni-
 19 cations carrier that is the subject of a court
 20 order or lawful authorization; but

1 “(B) does not include any information that
2 may disclose the physical location of the sub-
3 scriber (except to the extent that the location
4 may be determined from the telephone number).

5 “‘Commission’ means the Federal Communica-
6 tions Commission.

7 “‘government’ means the government of the
8 United States and any agency or instrumentality
9 thereof, the District of Columbia, any common-
10 wealth, territory, or possession of the United States,
11 and any State or political subdivision thereof author-
12 ized by law to conduct electronic surveillance.

13 “‘information services’—

14 “(A) means the offering of a capability for
15 generating, acquiring, storing, transforming,
16 processing, retrieving, utilizing, or making
17 available information via telecommunications;
18 and

19 “(B) includes electronic publishing and
20 electronic messaging services; but

21 “(C) does not include any capability for a
22 telecommunications carrier’s internal manage-
23 ment, control, or operation of its telecommuni-
24 cations network.

1 “telecommunications support services” means a
2 product, software, or service used by a telecommuni-
3 cations carrier for the internal signaling or switching
4 functions of its telecommunications network.

5 “‘telecommunications carrier’—

6 “(A) means a person or entity engaged in
7 the transmission or switching of wire or elec-
8 tronic communications as a common carrier for
9 hire (within the meaning of section 3(h) of the
10 Communications Act of 1934 (47 U.S.C.
11 153(h)));

12 “(B) includes—

13 “(i) a person or entity engaged in pro-
14 viding commercial mobile service (as de-
15 fined in section 332(d) of the Communica-
16 tions Act of 1934 (47 U.S.C. 332(d))); or

17 “(ii) a person or entity engaged in
18 providing wire or electronic communication
19 switching or transmission service to the ex-
20 tent that the Commission finds that such
21 service is a replacement for a substantial
22 portion of the local telephone exchange
23 service and that it is in the public interest
24 to deem such a person or entity to be a

1 telecommunications carrier for purposes of
2 this chapter; but

3 “(C) does not include persons or entities
4 insofar as they are engaged in providing infor-
5 mation services.

6 **“§ 2602. Assistance capability requirements**

7 “(a) CAPABILITY REQUIREMENTS.—Except as pro-
8 vided in subsections (b), (c), and (d) of this section, and
9 subject to section 2607(c), a telecommunications carrier
10 shall ensure that its services or facilities that provide a
11 customer or subscriber with the ability to originate, termi-
12 nate, or direct communications are capable of—

13 “(1) expeditiously isolating and enabling the
14 government to intercept, to the exclusion of any
15 other communications, all wire and electronic com-
16 munications carried by the carrier within a service
17 area to or from equipment, facilities, or services of
18 a subscriber of such carrier concurrently with their
19 transmission to or from the subscriber’s service, fa-
20 cility, or equipment or at such later time as may be
21 acceptable to the government;

22 “(2) expeditiously isolating and enabling the
23 government to access call-identifying information
24 that is reasonably available to the carrier—

1 “(A) before, during, or immediately after
2 the transmission of a wire or electronic commu-
3 nication (or at such later time as may be ac-
4 ceptable to the government); and

5 “(B) in a manner that allows it to be asso-
6 ciated with the communication to which it per-
7 tains,

8 except that, with regard to information acquired
9 solely pursuant to the authority for pen registers
10 and trap and trace devices (as defined in section
11 3127), such call-identifying information shall not in-
12 clude any information that may disclose the physical
13 location of the subscriber (except to the extent that
14 the location may be determined from the telephone
15 number);

16 “(3) delivering intercepted communications and
17 call-identifying information to the government in a
18 format such that they may be transmitted by means
19 of facilities or services procured by the government
20 to a location other than the premises of the carrier;
21 and

22 “(4) facilitating authorized communications
23 interceptions and access to call-identifying informa-
24 tion unobtrusively and with a minimum of inter-

1 ference with any subscriber's telecommunications
2 service and in a manner that protects—

3 “(A) the privacy and security of commu-
4 nications and call-identifying information not
5 authorized to be intercepted; and

6 “(B) information regarding the govern-
7 ment's interception of communications and ac-
8 cess to call-identifying information.

9 “(b) LIMITATIONS.—

10 “(1) DESIGN OF FEATURES AND SYSTEMS CON-
11 FIGURATIONS.—This chapter does not authorize any
12 law enforcement agency or officer—

13 “(A) to require any specific design of fea-
14 tures or system configurations to be adopted by
15 providers of wire or electronic communication
16 service, manufacturers of telecommunications
17 equipment, or providers of telecommunications
18 support services; or

19 “(B) to prohibit the adoption of any fea-
20 ture or service by providers of wire or electronic
21 communication service, manufacturers of tele-
22 communications equipment, or providers of tele-
23 communications support services.

24 “(2) INFORMATION SERVICES; PRIVATE NET-
25 WORKS AND INTERCONNECTION SERVICES AND FA-

1 CILITIES.—The requirements of subsection (a) do
2 not apply to—

3 “(A) information services; or

4 “(B) services or facilities that support the
5 transport or switching of communications for
6 private networks or for the sole purpose of
7 interconnecting telecommunications carriers.

8 “(3) ENCRYPTION.—A telecommunications car-
9 rier shall not be responsible for decrypting, or ensur-
10 ing the government’s ability to decrypt, any commu-
11 nication encrypted by a subscriber or customer, un-
12 less the encryption was provided by the carrier and
13 the carrier possesses the information necessary to
14 decrypt the communication.

15 “(c) EMERGENCY OR EXIGENT CIRCUMSTANCES.—In
16 emergency or exigent circumstances (including those de-
17 scribed in sections 2518 (7) or (11)(b) and 3125 of this
18 title and section 1805(e) of title 50), a carrier at its discre-
19 tion may fulfill its responsibilities under subsection (a)(3)
20 by allowing monitoring at its premises if that is the only
21 means of accomplishing the interception or access.

22 “(d) MOBILE SERVICE ASSISTANCE REQUIRE-
23 MENTS.—A telecommunications carrier offering a feature
24 or service that allows subscribers to redirect, hand off, or
25 assign their wire or electronic communications to another

1 service area or another service provider or to utilize facilities in another service area or of another service provider shall ensure that, when the carrier that had been providing assistance for the interception of wire or electronic communications or access to call-identifying information pursuant to a court order or lawful authorization no longer has access to the content of such communications or call-identifying information within the service area in which interception has been occurring as a result of the subscriber's use of such a feature or service, information is made available to the government (before, during, or immediately after the transfer of such communications) identifying the provider of wire or electronic communication service that has acquired access to the communications.

15 **“§ 2603. Notices of capacity requirements**

16 “(a) NOTICES OF MAXIMUM AND ACTUAL CAPACITY
17 REQUIREMENTS.—

18 “(1) IN GENERAL.—Not later than 1 year after
19 the date of enactment of this chapter, after consulting with State and local law enforcement agencies,
20 telecommunications carriers, providers of telecommunications support services, and manufacturers
21 of telecommunications equipment and after notice
22 and comment, the Attorney General shall publish in
23 the Federal Register and provide to appropriate tele-

1 communications carrier associations, standard-set-
2 ting organizations, and for a—

3 “(A) notice of the maximum capacity re-
4 quired to accommodate all of the communica-
5 tion interceptions, pen registers, and trap and
6 trace devices that the Attorney General esti-
7 mates that government agencies authorized to
8 conduct electronic surveillance may conduct and
9 use simultaneously; and

10 “(B) notice of the number of communica-
11 tion interceptions, pen registers, and trap and
12 trace devices, representing a portion of the
13 maximum capacity set forth under subpara-
14 graph (A), that the Attorney General estimates
15 that government agencies authorized to conduct
16 electronic surveillance may conduct and use si-
17 multaneously after the date that is 4 years
18 after the date of enactment of this chapter.

19 “(2) BASIS OF NOTICES.—The notices issued
20 under paragraph (1) may be based upon the type of
21 equipment, type of service, number of subscribers,
22 geographic location, or other measure.

23 “(b) COMPLIANCE WITH CAPACITY NOTICES.—

24 “(1) INITIAL CAPACITY.—Within 3 years after
25 the publication by the Attorney General of a notice

1 of capacity requirements or within 4 years after the
2 date of enactment of this chapter, whichever is
3 longer, a telecommunications carrier shall ensure
4 that its systems are capable of—

5 “(A) expanding to the maximum capacity
6 set forth in the notice under subsection
7 (a)(1)(A); and

8 “(B) accommodating simultaneously the
9 number of interceptions, pen registers, and trap
10 and trace devices set forth in the notice under
11 subsection (a)(1)(B).

12 “(2) EXPANSION TO MAXIMUM CAPACITY.—
13 After the date described in paragraph (1), a tele-
14 communications carrier shall ensure that it can ac-
15 commodate expeditiously any increase in the number
16 of communication interceptions, pen registers, and
17 trap and trace devices that authorized agencies may
18 seek to conduct and use, up to the maximum capac-
19 ity requirement set forth in the notice under sub-
20 section (a)(1)(A).

21 “(c) NOTICES OF INCREASED MAXIMUM CAPACITY
22 REQUIREMENTS.—

23 “(1) The Attorney General shall periodically
24 provide to telecommunications carriers written notice
25 of any necessary increases in the maximum capacity

1 requirement set forth in the notice under subsection
2 (a)(1)(A).

3 “(2) Within 3 years after receiving written no-
4 tice of increased capacity requirements under para-
5 graph (1), or within such longer time period as the
6 Attorney General may specify, a telecommunications
7 carrier shall ensure that its systems are capable of
8 expanding to the increased maximum capacity set
9 forth in the notice.

10 **“§ 2604. Systems security and integrity**

11 “A telecommunications carrier shall ensure that any
12 court ordered or lawfully authorized interception of com-
13 munications or access to call-identifying information ef-
14 fected within its switching premises can be activated only
15 with the affirmative intervention of an individual officer
16 or employee of the carrier.

17 **“§ 2605. Cooperation of equipment manufacturers**
18 **and providers of telecommunications**
19 **support services**

20 “(a) CONSULTATION.—A telecommunications carrier
21 shall consult, as necessary, in a timely fashion with manu-
22 facturers of its telecommunications transmission and
23 switching equipment and its providers of telecommuni-
24 cations support services for the purpose of identifying any
25 service or equipment, including hardware and software,

1 that may require modification so as to permit compliance
2 with this chapter.

3 “(b) MODIFICATION OF EQUIPMENT AND SERV-
4 ICES.—Subject to section 2607(c), a manufacturer of tele-
5 communications transmission or switching equipment and
6 a provider of telecommunications support services shall,
7 on a reasonably timely basis and at a reasonable charge,
8 make available to the telecommunications carriers using
9 its equipment or services such modifications as are nec-
10 essary to permit such carriers to comply with this chapter.

11 **“§ 2606. Technical requirements and standards; ex-**
12 **tension of compliance date**

13 “(a) SAFE HARBOR.—

14 “(1) CONSULTATION.—To ensure the efficient
15 and industry-wide implementation of the assistance
16 capability requirements under section 2602, the At-
17 torney General, in coordination with other Federal,
18 State, and local law enforcement agencies, shall con-
19 sult with appropriate associations and standard-set-
20 ting organizations of the telecommunications indus-
21 try and with representatives of users of tele-
22 communications services and facilities.

23 “(2) COMPLIANCE UNDER ACCEPTED STAND-
24 ARDS.—A telecommunications carrier shall be found
25 to be in compliance with the assistance capability re-

1 requirements under section 2602, and a manufacturer
2 of telecommunications transmission or switching
3 equipment or a provider of telecommunications sup-
4 port services shall be found to be in compliance with
5 section 2605, if the carrier, manufacturer, or sup-
6 port service provider is in compliance with publicly
7 available technical requirements or standards adopt-
8 ed by an industry association or standard-setting or-
9 ganization or by the Commission under subsection
10 (b) to meet the requirements of section 2602.

11 “(3) ABSENCE OF STANDARDS.—The absence
12 of technical requirements or standards for imple-
13 menting the assistance capability requirements of
14 section 2602 shall not—

15 “(A) preclude a carrier, manufacturer, or
16 services provider from deploying a technology or
17 service; or

18 “(B) relieve a carrier, manufacturer, or
19 service provider of the obligations imposed by
20 section 2602 or 2605, as applicable.

21 “(b) FCC AUTHORITY.—

22 “(1) IN GENERAL.—If industry associations or
23 standard-setting organizations fail to issue technical
24 requirements or standards or if a government agen-
25 cy or any other person believes that such require-

1 ments or standards are deficient, the agency or per-
2 son may petition the Commission to establish, by no-
3 tice and comment rulemaking or such other proceed-
4 ings as the Commission may be authorized to con-
5 duct, technical requirements or standards that—

6 “(A) meet the assistance capability re-
7 quirements of section 2602;

8 “(B) protect the privacy and security of
9 communications not authorized to be inter-
10 cepted; and

11 “(C) serve the policy of the United States
12 to encourage the provision of new technologies
13 and services to the public.

14 “(2) TRANSITION PERIOD.—If an industry tech-
15 nical requirement or standard is set aside or sup-
16 planted as a result of Commission action under this
17 section, the Commission, after consultation with the
18 Attorney General, shall establish a reasonable time
19 and conditions for compliance with and the transi-
20 tion to any new standard, including defining the ob-
21 ligations of telecommunications carriers under sec-
22 tion 2602 during any transition period.

23 “(c) EXTENSION OF COMPLIANCE DATE FOR FEA-
24 TURES AND SERVICES.—

1 “(1) PETITION.—A telecommunications carrier
2 proposing to deploy, or having deployed, a feature or
3 service within 4 years after the date of enactment of
4 this chapter may petition the Commission for 1 or
5 more extensions of the deadline for complying with
6 the assistance capability requirements under section
7 2602.

8 “(2) GROUND FOR EXTENSION.—The Commis-
9 sion may, after affording a full opportunity for hear-
10 ing and after consultation with the Attorney Gen-
11 eral, grant an extension under this paragraph, if the
12 Commission determines that compliance with the as-
13 sistance capability requirements under section 2602
14 is not reasonably achievable through application of
15 technology available within the compliance period.

16 “(3) LENGTH OF EXTENSION.—An extension
17 under this paragraph shall extend for no longer than
18 the earlier of—

19 “(A) the date determined by the Commis-
20 sion as necessary for the carrier to comply with
21 the assistance capability requirements under
22 section 2602; or

23 “(B) the date that is 2 years after the date
24 on which the extension is granted.

1 “(4) APPLICABILITY OF EXTENSION.—An ex-
2 tension under this subsection shall apply to only that
3 part of the carrier’s business on which the new fea-
4 ture or service is used.

5 **“§ 2607. Enforcement orders**

6 “(a) ENFORCEMENT BY COURT ISSUING SURVEIL-
7 LANCE ORDER.—If a court authorizing an interception
8 under chapter 119, a State statute, or the Foreign Intel-
9 ligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.)
10 or authorizing use of a pen register or a trap and trace
11 device under chapter 206 or a State statute finds that a
12 telecommunications carrier has failed to comply with the
13 requirements in this chapter, the court may direct that
14 the carrier comply forthwith and may direct that a pro-
15 vider of support services to the carrier or the manufac-
16 turer of the carrier’s transmission or switching equipment
17 furnish forthwith modifications necessary for the carrier
18 to comply.

19 “(b) ENFORCEMENT UPON APPLICATION BY ATTOR-
20 NEY GENERAL.—The Attorney General may apply to the
21 appropriate United States district court for, and the Unit-
22 ed States district courts shall have jurisdiction to issue,
23 an order directing that a telecommunications carrier, a
24 manufacturer of telecommunications transmission or

1 switching equipment, or a provider of telecommunications
2 support services comply with this chapter.

3 “(c) GROUNDS FOR ISSUANCE.—A court shall issue
4 an order under subsection (a) or (b) only if the court finds
5 that—

6 “(1) alternative technologies or capabilities or
7 the facilities of another carrier are not reasonably
8 available to law enforcement for implementing the
9 interception of communications or access to call-
10 identifying information; and

11 “(2) compliance with the requirements of this
12 chapter is reasonably achievable through the applica-
13 tion of available technology to the feature or service
14 at issue or would have been reasonably achievable if
15 timely action had been taken.

16 “(d) TIME FOR COMPLIANCE.—Upon issuance of an
17 enforcement order under this section, the court shall speci-
18 fy a reasonable time and conditions for complying with
19 its order, considering the good faith efforts to comply in
20 a timely manner, any effect on the carrier’s, manufactur-
21 er’s, or service provider’s ability to continue to do busi-
22 ness, the degree of culpability or delay in undertaking ef-
23 forts to comply, and such other matters as justice may
24 require.

1 “(e) LIMITATION.—An order under this section may
2 not require a telecommunications carrier to meet the gov-
3 ernment’s demand for interception of communications and
4 acquisition of call-identifying information to any extent in
5 excess of the capacity for which notice has been provided
6 under section 2603.

7 “(f) CIVIL PENALTY.—

8 “(1) IN GENERAL.—A court issuing an order
9 under this section against a telecommunications car-
10 rier, a manufacturer of telecommunications trans-
11 mission or switching equipment, or a provider of
12 telecommunications support services may impose a
13 civil penalty of up to \$10,000 per day for each day
14 in violation after the issuance of the order or after
15 such future date as the court may specify.

16 “(2) CONSIDERATIONS.—In determining wheth-
17 er to impose a fine and in determining its amount,
18 the court shall take into account—

19 “(A) the nature, circumstances, and extent
20 of the violation;

21 “(B) the violator’s ability to pay, the viola-
22 tor’s good faith efforts to comply in a timely
23 manner, any effect on the violator’s ability to
24 continue to do business, the degree of culpabil-

1 ity, and the length of any delay in undertaking
2 efforts to comply; and

3 “(C) such other matters as justice may re-
4 quire.

5 “(3) CIVIL ACTION.—The Attorney General
6 may file a civil action in the appropriate United
7 States district court to collect, and the United
8 States district courts shall have jurisdiction to im-
9 pose, such fines.

10 **“§ 2608. Payment of costs of telecommunications car-**
11 **riers**

12 “(a) EQUIPMENT, FEATURES, AND SERVICES DE-
13 PLOYED BEFORE DATE OF ENACTMENT; CAPACITY
14 COSTS.—The Attorney General shall, subject to the avail-
15 ability of appropriations, pay telecommunications carriers
16 for all reasonable costs directly associated with—

17 “(1) the modifications performed by carriers
18 prior to the effective date of section 2602 or prior
19 to the expiration of any extension granted under sec-
20 tion 2606(c) to establish, with respect to equipment,
21 features, and services deployed before the date of en-
22 actment of this chapter, the capabilities necessary to
23 comply with section 2602;

1 “(2) meeting the maximum capacity require-
2 ments set forth in the notice under section
3 2603(a)(1)(A); and

4 “(3) expanding existing facilities to accommo-
5 date simultaneously the number of interceptions, pen
6 registers and trap and trace devices for which notice
7 has been provided under section 2603(a)(1)(B).

8 “(b) EQUIPMENT, FEATURES, AND SERVICES DE-
9 PLOYED ON OR AFTER DATE OF ENACTMENT.—

10 “(1) IN GENERAL.—If compliance with the as-
11 sistance capability requirements of section 2602 is
12 not reasonably achievable with respect to equipment,
13 features, or services deployed on or after the date of
14 enactment of this chapter, the Attorney General, on
15 application of a telecommunications carrier, may pay
16 the telecommunications carrier reasonable costs di-
17 rectly associated with achieving compliance.

18 “(2) CONSIDERATION.—In determining whether
19 compliance with the assistance capability require-
20 ments of section 2602 is reasonably achievable with
21 respect to any equipment, feature, or service de-
22 ployed the date of enactment of this chapter, consid-
23 eration shall be given to the time when the equip-
24 ment, feature, or service was deployed.

1 “(c) ALLOCATION OF FUNDS FOR PAYMENT.—The
2 Attorney General shall allocate funds appropriated to
3 carry out this chapter in accordance with law enforcement
4 priorities determined by the Attorney General.

5 “(d) FAILURE TO MAKE PAYMENT WITH RESPECT
6 TO EQUIPMENT, FEATURES, AND SERVICES DEPLOYED
7 BEFORE DATE OF ENACTMENT.—

8 “(1) CONSIDERED TO BE IN COMPLIANCE.—
9 Unless the Attorney General has agreed to pay the
10 telecommunications carrier for all reasonable costs
11 directly associated with modifications necessary to
12 bring the equipment, feature, or service into actual
13 compliance with those requirements, provided the
14 carrier has requested payment in accordance with
15 procedures promulgated pursuant to subsection (e),
16 any equipment, feature, or service of a telecommuni-
17 cations carrier deployed before the date of enact-
18 ment of this chapter shall be considered to be in
19 compliance with the assistance capability require-
20 ments of section 2602 unless the equipment, feature,
21 or service is replaced or significantly upgraded or
22 otherwise undergoes major modification.

23 “(2) LIMITATION ON ORDER.—An order under
24 section 2607 shall not require a telecommunications
25 carrier to modify, for the purpose of complying with

1 the assistance capability requirements of section
2 2602, any equipment, feature, or service deployed
3 before the date of enactment of this chapter unless
4 the Attorney General has agreed to pay the tele-
5 communications carrier for all reasonable costs di-
6 rectly associated with modifications necessary to
7 bring the equipment, feature, or service into actual
8 compliance with those requirements.

9 “(e) PROCEDURES AND REGULATIONS.—Notwith-
10 standing any other law, the Attorney General shall, after
11 notice and comment, establish any procedures and regula-
12 tions deemed necessary to effectuate timely and cost-effi-
13 cient payment to telecommunications carriers for compen-
14 sable costs incurred under this chapter, under chapters
15 119 and 121, and under the Foreign Intelligence Surveil-
16 lance Act of 1978 (50 U.S.C. 1801 et seq.).

17 “(f) DISPUTE RESOLUTION.—If there is a dispute be-
18 tween the Attorney General and a telecommunications car-
19 rier regarding the amount of reasonable costs to be paid
20 under subsection (a), the dispute shall be resolved and the
21 amount determined in a proceeding initiated at the Com-
22 mission or by the court from which an enforcement order
23 is sought under section 2607.”.

24 (b) TECHNICAL AMENDMENT.—The part analysis for
25 part I of title 18, United States Code, is amended by in-

- 1 inserting after the item relating to chapter 119 the following
- 2 new item:

“120. Telecommunications carrier assistance to the Government 2601”.

3 SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

4 There are authorized to be appropriated to carry out
5 section 2608 of title 18, United States Code, as added by
6 section 1—

7 (1) a total of \$500,000,000 for fiscal years
8 1995, 1996, and 1997; and

9 (2) such sums as are necessary for each fiscal
10 year thereafter,

11 such sums to remain available until expended.

12 SEC. 3. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided in paragraph (2), chapter 120 of title 18, United States Code, as added by section 1, shall take effect on the date of enactment of this Act.

(b) ASSISTANCE CAPABILITY AND SYSTEMS SECURITY AND INTEGRITY REQUIREMENTS.—Sections 2602 and 2604 of title 18, United States Code, as added by section 1, shall take effect on the date that is 4 years after the date of enactment of this Act.

22 SEC. 4. REPORTS.

23 (a) REPORTS BY THE ATTORNEY GENERAL.—

1 (1) IN GENERAL.—On or before November 30,
2 1995, and on or before November 30 of each year
3 for 5 years thereafter, the Attorney General shall
4 submit to Congress and make available to the public
5 a report on the amounts paid during the preceding
6 fiscal year in payment to telecommunications car-
7 riers under section 2608 of title 18, United States
8 Code, as added by section 1.

9 (2) CONTENTS.—A report under paragraph (1)
10 shall include—

11 (A) a detailed accounting of the amounts
12 paid to each carrier and the technology, equip-
13 ment, feature or service for which the amounts
14 were paid; and

15 (B) projections of the amounts expected to
16 be paid in the current fiscal year, the carriers
17 to which payment is expected to be made, and
18 the technologies, equipment, features or services
19 for which payment is expected to be made.

20 (b) REPORTS BY THE COMPTROLLER GENERAL.—

21 (1) PAYMENTS FOR MODIFICATIONS.—On or
22 before April 1, 1996, and April 1, 1998, the Comp-
23 troller General of the United States, after consulta-
24 tion with the Attorney General and the telecommuni-
25 cations industry, shall submit to the Congress a re-

1 port reflecting its analysis of the reasonableness and
2 cost-effectiveness of the payments made by the At-
3 torney General to telecommunications carriers for
4 modifications necessary to ensure compliance with
5 chapter 120 of title 18, United States Code, as
6 added by section 1.

7 (2) COMPLIANCE COST ESTIMATES.—A report
8 under paragraph (1) shall include the findings and
9 conclusions of the Comptroller General on the costs
10 to be incurred after the compliance date, including
11 projections of the amounts expected to be incurred
12 and the technologies, equipment, features or services
13 for which expenses are expected to be incurred by
14 telecommunications carriers to comply with the as-
15 sistance capability requirements in the first 5 years
16 after the effective date of section 2602.

17 **SEC. 5. CORDLESS TELEPHONES.**

18 (a) DEFINITIONS.—Section 2510 of title 18, United
19 States Code, is amended—

20 (1) in paragraph (1) by striking “but such term
21 does not include” and all that follows through “base
22 unit”; and

23 (2) in paragraph (12) by striking subparagraph
24 (A) and redesignating subparagraphs (B), (C), and

1 (D) as subparagraphs (A), (B), and (C), respec-
2 tively.

3 (b) PENALTY.—Section 2511 of title 18, United
4 States Code, is amended—

5 (1) in subsection (4)(b)(i) by inserting “a
6 cordless telephone communication that is transmit-
7 ted between the cordless telephone handset and the
8 base unit,” after “cellular telephone communica-
9 tion,”; and

10 (2) in subsection (4)(b)(ii) by inserting “a
11 cordless telephone communication that is transmit-
12 ted between the cordless telephone handset and the
13 base unit,” after “cellular telephone communica-
14 tion,”.

15 **SEC. 6. RADIO-BASED DATA COMMUNICATIONS.**

16 Section 2510(16) of title 18, United States Code, is
17 amended—

18 (1) by striking “or” at the end of subparagraph
19 (D);

20 (2) by inserting “or” at the end of subpara-
21 graph (E); and

22 (3) by inserting after subparagraph (E) the fol-
23 lowing new subparagraph:

24 “(F) an electronic communication;”

1 **SEC. 7. PENALTIES FOR MONITORING RADIO COMMUNICA-**
2 **TIONS THAT ARE TRANSMITTED USING MOD-**
3 **ULATION TECHNIQUES WITH NONPUBLIC PA-**
4 **RAMETERS.**

5 Section 2511(4)(b) of title 18, United States Code,
6 is amended by striking “or encrypted, then” and inserting
7 “, encrypted, or transmitted using modulation techniques
8 the essential parameters of which have been withheld from
9 the public with the intention of preserving the privacy of
10 such communication”.

11 **SEC. 8. TECHNICAL CORRECTION.**

12 Section 2511(2)(a)(i) of title 18, United States Code,
13 is amended by striking “used in the transmission of a wire
14 communication” and inserting “used in the transmission
15 of a wire or electronic communication”.

16 **SEC. 9. FRAUDULENT ALTERATION OF COMMERCIAL MO-**
17 **BILE RADIO INSTRUMENTS.**

18 (a) OFFENSE.—Section 1029(a) of title 18, United
19 States Code, is amended—

20 (1) by striking “or” at the end of paragraph
21 (3); and

22 (2) by inserting after paragraph (4) the follow-
23 ing new paragraphs:

24 “(5) knowingly and with intent to defraud uses,
25 produces, traffics in, has control or custody of, or
26 possesses a telecommunications instrument that has

1 been modified or altered to obtain unauthorized use
2 of telecommunications services; or

3 “(6) knowingly and with intent to defraud uses,
4 produces, traffics in, has control or custody of, or
5 possesses—

6 “(A) a scanning receiver; or

7 “(B) hardware or software used for alter-
8 ing or modifying telecommunications instru-
9 ments to obtain unauthorized access to tele-
10 communications services,”.

11 (b) PENALTY.—Section 1029(c)(2) of title 18, United
12 States Code, is amended by striking “(a)(1) or (a)(4)” and
13 inserting “(a) (1), (4), (5), or (6)”.

14 (c) DEFINITIONS.—Section 1029(e) of title 18,
15 United States Code, is amended—

16 (1) in paragraph (1) by inserting “electronic se-
17 rial number, mobile identification number, personal
18 identification number, or other telecommunications
19 service, equipment, or instrument identifier,” after
20 “account number,”;

21 (2) by striking “and” at the end of paragraph
22 (5);

23 (3) by striking the period at the end of para-
24 graph (6) and inserting “; and”; and

1 (4) by adding at the end the following new
2 paragraph:

3 “(7) the term ‘scanning receiver’ means a de-
4 vice or apparatus that can be used to intercept a
5 wire or electronic communication in violation of
6 chapter 119.”.

7 **SEC. 10. TRANSACTIONAL DATA.**

8 (a) DISCLOSURE OF RECORDS.—Section 2703 of title
9 18, United States Code, is amended—

10 (1) in subsection (c)(1)—

11 (A) in subparagraph (B)—

12 (i) by striking clause (i); and

13 (ii) by redesignating clauses (ii), (iii),
14 and (iv) as clauses (i), (ii), and (iii), re-
15 spectively; and

16 (B) by adding at the end the following new
17 subparagraph:

18 “(C) A provider of electronic communica-
19 tion service or remote computing service shall
20 disclose to a governmental entity the name, ad-
21 dress, telephone toll billing records, and length
22 of service of a subscriber to or customer of such
23 service and the types of services the subscriber
24 or customer utilized, when the governmental en-
25 tity uses an administrative subpoena authorized

1 by a Federal or State statute or a Federal or
2 State grand jury or trial subpoena or any
3 means available under subparagraph (B).’; and

4 (2) by amending the first sentence of subsection
5 (d) to read as follows: “A court order for disclosure
6 under subsection (b) or (c) may be issued by any
7 court that is a court of competent jurisdiction de-
8 scribed in section 3126(2)(A) and shall issue only if
9 the governmental entity offers specific and
10 articulable facts showing that there are reasonable
11 grounds to believe that the contents of a wire or
12 electronic communication, or the records or other in-
13 formation sought, are relevant and material to an
14 ongoing criminal investigation.”.

15 (b) PEN REGISTERS AND TRAP AND TRACE DE-
16 VICES.—Section 3121 of title 18, United States Code, is
17 amended—

18 (1) by redesignating subsection (c) as sub-
19 section (d); and

20 (2) by inserting after subsection (b) the follow-
21 ing new subsection:

22 “(c) LIMITATION.—A government agency authorized
23 to install and use a pen register under this chapter or
24 under State law, shall use technology reasonably available
25 to it that restricts the recording or decoding of electronic

- 1 or other impulses to the dialing and signalling information
- 2 utilized in call processing.”.

Passed the Senate October 7 (legislative day, September 12), 1994.

Attest:

Secretary.

S 2375 ES——2

S 2375 ES——3

S 2375 ES——4

S 2375 ES——5